

# **TOWN OF SEEKONK**

## **Family Medical Leave Act Policy and Procedure**

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In compliance with the Family Medical Leave Act (FMLA) of 1993, the Town of Seekonk observes the following policy for eligible employees. This policy integrates with and is included with paid leave policies as provided by collective bargaining agreements. Additionally, this policy runs concurrently with and is integrated with maternity leave as provided by M.G.L. c. 149, s. 105D.

### **POLICY**

An eligible employee shall be entitled to a total of 12 workweeks of leave during a rolling 12-month period for one or more of the following:

1. to care for the employee's own serious health condition which makes the employee unable to perform his/her job;
2. to care for the serious health condition of a family member;
3. the birth, adoption, or foster care placement of a child.

Leave for the birth or placement of a child must be taken and concluded within the twelve months following the birth or placement.

Spouses employed by the Town are jointly entitled to a combined total of 12 workweeks of family leave for the birth or placement of a child for adoption or foster care, and to care for a parent (but not a parent-in-law) who has a serious health condition.

### **DEFINITIONS**

- a. **ELIGIBLE EMPLOYEES:** an employee who has worked for the Town for at least twelve months and provided at least 1,250 hours of service during the twelve months preceding the start of the leave (eligible part-time employees' leave will be pro rated).
  - b. **FAMILY MEMBER:** spouse; spousal equivalent or life partner; a child, step child, or foster child; a ward of an employee who lives with the employee and who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that family medical leave is to commence; or, a parent of the employee including biological, adoptive, step or foster, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter.
  - c. **HEALTH CARE PROVIDER:** A doctor of medicine or osteopathy authorized to practice medicine or surgery in the state in which the doctor practices, and any other person determined by the Secretary of Labor to be capable of providing health care services, including;
    1. podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law;
    2. nurse practitioners, nurse-midwives, clinical social workers and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law; and,
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3. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from the Town that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement.
- d. **INTERMITTENT LEAVE:** Time away from the job taken in separate blocks of time due to a single illness or injury.
- e. **REGULAR LEAVE:** A continuous uninterrupted block of time away from the job.
- f. **REDUCED LEAVE SCHEDULE:** Reduction in the number of hours per workday or workweek.
- g. **SERIOUS HEALTH CONDITION:** an illness, injury, impairment or physical or mental condition that involves:
  1. incapacity or treatment as an in-patient in a hospital, hospice, or residential medical care facility;
  2. incapacity caused by a health condition requiring absence from work or other activities for more than three calendar days and involves continuing treatment of a health care provider; or,
  3. continuing treatment by a health care provider for a chronic or long-term health condition, which is in curable or if left untreated would result in incapacity for more than three calendar days.
- h. **TWELVE-MONTH PERIOD:** a "rolling" period measured backward from the date an employee uses any family medical Leave.

## **PROCEDURE**

### **Notice**

Eligible employees will provide written notice to the Town Administrator of their intent to use family medical leave thirty (30) days in advance when the leave is foreseeable for planned medical treatment or for the birth or placement of a child. When unforeseen events occur for which the employee is eligible for family medical leave, the employee (or spouse or family member) must provide notice as soon as practicable. This would ordinarily mean at least verbal notification within one or two business days of when the need for leave becomes known to the employee. The notice will include the reason for the leave, the date the leave shall begin, and the intended date of return. Whenever possible, the employee shall complete and submit the Request for Family Medical Leave Form to the Town Administrator to request family medical leave. The Town Administrator or designee will provide a written response to the employee within a reasonable amount of time.

### **Certification**

Leave for serious medical conditions must be supported by certification by a health care provider. Certification shall include:

1. Identification of the practitioner and the type of medical practice.
  2. The date the serious health condition commenced and the probable duration of the condition.
  3. Diagnosis of the serious health condition.
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4. Statement of the regimen of treatment prescribed for the condition (including estimated number of visits, nature, frequency and duration of treatment, including referred or ordered treatment of other health care providers).
5. In instances of the employee's serious health condition:
  - a. Statement that the employee is unable to perform work of any kind, or
  - b. Statement that the employee is unable to perform the essential functions of his/her position (based on statement of essential functions of the position by the employee's department head or Town Administrator, using job descriptions whenever possible).
6. In instances of care for a family member:
  - a. Statement that the family member is in need of the employee's assistance for basic medical, hygiene, nutritional needs, safety, or transportation;
  - b. Statement that the employee's presence would be beneficial or desirable for the care of the family member; and,
  - c. Employees must certify the care he/she will provide and an estimate of the time period.

The certification must be received with the request to use family medical leave or within fifteen days of being asked to do so. If the need for leave was not foreseeable, the employee must still attempt to provide the certification within fifteen days or as soon thereafter as practical. Certification forms are available through the Town Administrator's office.

If the Town has reason to doubt the validity of a medical certification, the employee may be required to obtain a second opinion from a health care provider designated by the Town at the Town's expense. If the two opinions differ, the Town may require a third opinion, which will be final and binding, from a health care provider mutually agreed to and at the Town's expense.

Recertification by the health care provider may be required every thirty days. Recertification must include the employee's explicit intent to return to work and a probable date of return.

Recertification may be required more frequently if:

1. The employee requests an extension of leave.
2. Significant changes occur from the original certification circumstances.
3. The Town's receives information that casts doubts upon the continuing validity of the certification.
4. The inability of the employee to return from leave because of the continuation, reoccurrence, or onset of a serious health condition.

#### **Intermittent Leave / Reduced Schedule**

Under some circumstances, employees may take family medical leave intermittently, which means taking leave in blocks of time, or by reducing their normal weekly or daily work schedule.

Serious health condition (employee or family member) leave may be taken intermittently or on a reduced schedule. Employees requesting intermittent or reduced schedule family medical leave must make a reasonable effort to schedule treatment so as not to disrupt the Town's operations and administration. The Town may require a temporary transfer to an alternative position to better accommodate the reoccurring periods of leave. In no case will the increment of leave be less than one hour.

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### **Paid Leave and Medical Benefits**

In all circumstances, family medical leave is unpaid leave in the first instance (although you may be eligible for workers' compensation benefits). Paid leave may be substituted for unpaid family medical leave as provided for below. However, upon depletion of any available accrued paid leave benefits, the family medical leave becomes unpaid leave. The substitution of paid leave time for unpaid leave time does not extend the twelve (12) week leave period as family medical leave runs concurrently with other types of leave. Further, in no case can the substitution of paid leave time for unpaid leave time result in the employee receiving more than 100 percent of his/her regular salary or wages.

1. If family medical leave is requested because of the birth, adoption, or foster care placement of a child, any accrued paid sick, vacation, personal leave, and compensatory time may first be substituted for unpaid family medical leave. Thereafter, the remaining family medical leave becomes unpaid leave.
2. If family medical leave is requested because of the employee's own serious health condition, or to care for a covered family member with a serious health condition, any accrued paid sick leave may first be substituted for unpaid family medical leave to the extent provided by the applicable collective bargaining agreement, individual employment contract or personnel bylaws. In the event sick leave accrual totals less than the approved duration of family medical leave, then personal, vacation and compensatory leave may be substituted for unpaid leave. Thereafter, any remaining family medical leave becomes unpaid leave.

During any portion of the family medical leave, whether the accrued paid leave is applied or for which any portion of the leave is unpaid, the employee will continue to accrue sick leave, vacation and other leave in accordance with the provisions of the applicable collective bargaining agreement, individual employment contract, or personnel bylaws.

The Town will continue the contribution to the employee's group health plan during the family medical leave. The employee will have his/her contribution deducted from the applied paid leave as a regular payroll deduction. Upon the depletion of said leave, the employee must make arrangements to pay his/her contribution to the health premiums.

If the employee fails to make his/her premium payment within 30 days of the depletion of available paid leave, the Town will cease the maintenance of health coverage. The Town will recover from the employee premiums paid during any period of unpaid family medical leave if the employee fails to return to work after the family medical leave entitlement has expired, except in the instance of continuation, reoccurrence, or onset of qualifying family medical leave circumstances or other circumstances beyond the control of the employee.

### **Restoration to Position**

Employees who are not required to submit medical certification must submit a report to the department head every thirty (30) days regarding the employee's status and his/her intent to return to work on a probable date. Prior to returning to work employees on family medical leave due to their own serious health condition must submit certification to their department head from the health care provider that the employee is able to resume work, i.e., is fit for duty.

On return from family medical leave, the employee will be returned to the same or an equivalent position (equivalent benefits, pay and other terms and conditions of employment). The employee has no "right" to be returned to the same position. The Town may deny restoration to a key employee (one who is salaried and among the highest paid 10% of employees) if it is necessary to prevent substantial and grievous economic injury to the operations of the Town. The Town will notify Key employees of this status as soon as practicable, and the Town will notify said employees if restoration is denied.

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If an employee works at another job during the leave without prior written approval by the Town, the Town will assume that the employee has resigned his or her position and may terminate the employee's employment. Similarly, if an employee fails to return from a leave on the agreed upon date, except for reasons beyond his or her control, the Town will assume that the employee resigned.

### **Denial**

Conditions under which family medical leave and/or reinstatement may be denied include (but are not limited to):

1. Ineligibility of employee;
2. Unqualified leave under the Family Medical Leave Act;
3. Employee fails to give timely advance notice for foreseeable leave (temporary denial up to 30 days after employee provides notice of need);
4. Employee fails to provide in a timely manner requested medical certification (temporary denial up to time of submittal);
5. Employee fails to supply fitness-for-duty certificate (up to time of submittal);
6. Employee would not otherwise have been employed if leave had not been taken;
7. Employee unequivocally advises Town of intent not to return to work;
8. "Key" employee status;
9. Fraudulent acquisition of family medical leave; and,
10. Employment with another employer while on family medical leave.

To the extent that any state law, collective bargaining agreement, or individual employment contract contains leave requirements which differ in any way from those stated in this policy, the Town will satisfy the federal, state or contractual requirements.

All notifications, certifications, and questions must be submitted to the Town Administrator. Deliberation, interpretation, and determination will be based on the Department of Labor Family Medical Leave Act Rules and Regulations regarding federal Family and Medical Leave (29 CFR Part 825), and Massachusetts maternity leave (MGL Chapter 149, section 105D).

**TOWN OF SEEKONK  
REQUEST FOR FAMILY MEDICAL LEAVE**

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Employee Name: \_\_\_\_\_  
Position Title: \_\_\_\_\_

Date of Request: \_\_\_\_\_  
Department: \_\_\_\_\_

Eligible employees are entitled under the FMLA to up to 12 weeks of unpaid, job-protected leave for certain family and medical reasons. Submit this request form to your department head at least 30 days before the leave is to commence; or if not practicable, as soon as is practicable. The Town reserves the right to deny or postpone leave for failure to give appropriate notice when such denial/postponement would be permitted under federal or state law.

**I request a Family Medical Leave for the following reason (check one):**

- \_\_\_\_\_ A. The birth of a child and in order to care for such child, or the placement of a child for adoption or foster care.
- \_\_\_\_\_ B. In order to care for an immediate family member if such family member has a serious health condition. Circle one: CHILD – SPOUSE/PARTNER - PARENT (Must submit "CERTIFICATION OF HEALTH CARE PROVIDER FOR FAMILY MEMBER'S SERIOUS HEALTH CONDITION, U.S Dept. of Labor Form WH-380-F " within 15 days).
- \_\_\_\_\_ C. Employee's own serious health condition that makes the employee unable to perform the functions of his/her position. (Must submit "CERTIFICATION OF HEALTH CARE PROVIDER FOR EMPLOYEE'S SERIOUS HEALTH CONDITION, U.S Dept. of Labor Form WH-380-E " within 15 days

**I request extension of a previously approved request for a Family Medical Leave for the following reason:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Expected date of return to work: \_\_\_\_\_

**Method of Leave Requested:**

- \_\_\_\_\_ A. Consecutive Leave
- \_\_\_\_\_ B. Intermittent or Reduced Leave Schedule (Specify Schedule Below)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date leave is to begin or best estimate: \_\_\_\_\_

Expected duration of leave or best estimate: \_\_\_\_\_

The total number of days of leave I request is: \_\_\_\_\_

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***I have received the Town of Seekonk's Family Medical Leave Act Policy and Procedure, and acknowledge the obligations of the Town and myself, including Notice, Certification, Intermittent Leave/Reduced Schedule, Paid Leave and Medical Benefits, and Restoration to Position.***

I agree to return to work on \_\_\_\_\_. If circumstances change such that I will not be able to return to work on that date, I agree to inform my department head by submitting a REQUEST FOR FAMILY MEDICAL LEAVE form. I understand that my benefits will continue during my leave and that I will arrange to pay my share of applicable premiums.

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**TO BE COMPLETED BY DEPARTMENT HEAD**

Hire Date: \_\_\_\_\_ Employee is: \_\_\_\_ Full-time \_\_\_\_ Part-time  
Regular hours are: \_\_\_\_\_ on \_\_\_\_\_ days of the week for a total of \_\_\_\_\_ hours.  
How will employee's duties and responsibilities be handled during the leave?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Employee has previously requested family or medical leave on \_\_\_\_\_  
Leave taken from \_\_\_\_\_ to \_\_\_\_\_ Total time taken: \_\_\_\_\_  
Department Head: \_\_\_\_\_ Date: \_\_\_\_\_

**TO BE COMPLETED BY TOWN ADMINISTRATOR'S OFFICE**

Prior leave requests confirmed: \_\_\_\_\_  
Leave is: \_\_\_\_ Approved  
\_\_\_\_ Postponed / Denied for the following reasons: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_

**TOWN OF SEEKONK**  
**NOTICE OF ACKNOWLEDGMENT OF FAMILY LEAVE GUIDELINES**

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Employee: \_\_\_\_\_

Job Title: \_\_\_\_\_ Department: \_\_\_\_\_

Date of Leave Request: \_\_\_\_\_

Date Leave Will Begin: \_\_\_\_\_

Expected Date of Return: \_\_\_\_\_

Family Member's Name (if applicable): \_\_\_\_\_

Relationship: \_\_\_\_\_

1. I understand that the length of my leave will not exceed twelve (12) weeks, in total for either this leave alone, or together with any other medical or family related leave(s) taken within the twelve months prior to this leave request; and that this leave will be counted towards my Family and Medical Leave Act (FMLA) entitlement.
2. If my family and medical leave is for purposes of a serious health condition that makes me unable to perform the functions of my job or to care for my family member who has a serious medical condition, I understand that I will be required to furnish the Town with a completed medical certification form attesting to my need for assisting in the caring for the seriously-ill family member, or, if the leave is for my own serious health condition, in order to verify the medical necessity of such care and subsequent leave of absence. This form needs to be filled out and completed no later than 15 days after the employee's request for the leave as stated above, or as soon as possible in the event of an unforeseeable ailment(s).

Failure to furnish the Town with a completed medical certification form according to this policy may result in a denial of my request for family or medical leave until the certification form is completed and submitted to the Human Resources Department. I further understand that the Town may ask me to go to another health care provider to be designated and paid for by the Town for a second opinion in order to verify the medical necessity of such assistance and leave of absence. If the two opinions differ, I may elect to obtain a third opinion at a third health care provider to be designated by the Town and paid for by the Town. This third opinion will be final and binding.

3. I understand that I may utilize my "available" earned time-off leave (such as vacation, personal, sick and compensatory time) and substitute those earned days as part of my unpaid FMLA leave.
4. I understand that while I am out on family and medical leave, I will be required to continue to make my health insurance premium payments pursuant to the Town's health insurance policy as if I were still working. I have made arrangements with the Treasurer's office concerning these payments if it will not be occurring by payroll deduction.
5. If my leave is for purposes of the birth of a child or because of my own serious health condition, I understand that I will be required to obtain a medical certification from a health care provider to attest that I am fit to resume work. This certification shall be limited to an evaluation of the particular health condition that resulted in my need for FMLA leave. Failure to submit the required fitness-for-duty certification to the Human Resources Department will result in the denial of my request to resume work.



6. The Town has notified me as to whether or not I am to be classified as a "key employee." If my employment position qualifies me a "key employee," I understand that my position may not be available upon my return from leave if the Town determines that the restoration of my employment may cause "substantial and grievous economic injury" to the operations of, or would cause long-term economic injury to, the Town.
7. I may return to the same or similar position with no loss of employment benefits or status, unless other employees of equal length of seniority and status in the same or similar position have been laid off due to economic conditions or other changes have occurred in operation conditions affecting employment during such Family Medical Leave.
8. If my leave of absence is for purposes of caring for a serious health condition or a covered family member, or if it is due to my own serious health condition, then I may be required to obtain medical re-certification during the course of my leave from the health care provider supervising the treatment for such serious health condition concerning the medical necessity for my leave. I may also be required to report periodically during the course of my leave on my own status and my intent to return to work.

I also understand that if I fail to return to work after taking FMLA leave, I will be required to reimburse the Town for any premium costs of any health insurance coverage paid by the Town during the course of my leave unless the reason for my inability to return to work is due to a serious health condition incurred by a family member or myself or due to other circumstances beyond my control which prevent me from returning to work.

Employee: \_\_\_\_\_  
Town Representative: \_\_\_\_\_

Date: \_\_\_\_\_  
Date: \_\_\_\_\_

**ADDITIONAL FORMS TO BE FILLED OUT BY LICENSED HEALTH CARE  
PROVIDER MUST BE PICKED UP IN THE  
TOWN ADMINISTRATORS' OFFICE**